



## MEMORANDUM

TO: Planning Commission  
FROM: Jana Fox, Current Planning Manager  
DATE: June 7, 2019  
SUBJECT: Life Time Fitness Beaverton (DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0007 / TP2018-0009)

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Staff provides this memo to provide to the Planning Commission with the final submittal from the applicant (Exhibit 3.5) received on June 7, 2019 per the agreed upon continuance schedule.

Staff also provides an amended staff report dated June 7, 2019 reflecting changes made during the continuance period. The amended staff report provides updates to all sections of the staff report with the exception of the Loading Determination, Replat One, and Sidewalk Design Modification portions which remain unchanged from the original May 8, 2019 report. The June 7, 2019 staff report responds to the public testimony received during the review process and the continuance period with the SR section of the report.

### Exhibits

#### **Applicant Submittals:**

3.5 Applicant's Final Comments, dated June 7, 2019

#### **Staff Report, dated June 7, 2019**

Received  
Planning Division  
06/07/2019

EXHIBIT 3.5



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June 7, 2019

VIA EMAIL JFOX@BEAVERTONOREGON.GOV

City of Beaverton  
Planning Commission  
c/o Jana Fox, Current Planning Manager  
P.O. Box 4755  
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**Re: Life Time Fitness (ADJ2018-0006 / DR 2018-0128 / LD2019-0008 / LO2018-0005 /  
SDM2018-0007 / TP2018-0009)  
Final Argument**

Dear Commissioners:

My office represents LTF Real Estate Company, Inc. (“Life Time”) in connection with the above-referenced application. The Planning Commission held a public hearing regarding Life Time’s application on May 15, 2019. Following the hearing, the public record was left open to allow interested parties to submit additional testimony and evidence. The initial open record period concluded on May 29, 2019. Interested parties were then given until June 5, 2019 to respond to testimony or evidence submitted during the initial open record period (May 15-May 29). After the conclusion of the rebuttal period, Life Time was given an opportunity to submit a final argument. This letter is Life Time’s final testimony; no new evidence is provided.

The purpose of this letter is two-fold. First, this letter provides a summary list of concerns that were raised in public testimony and directs the Commission to Life Time’s response to those concerns. Second, this letter responds to new arguments raised by E. Michael Connors, on behalf of Beaverton Business Owners, LLC, in a letter dated June 5, 2019.

**A. Summary of Public Comment and Response**

Certain concerns were raised in public testimony throughout the open record period. Life Time responded to these concerns in two letters from this office, appendices to those letters, and memoranda from David Evans and Associates, Inc. (“DEA”) submitted on May 29, 2019 and June 5, 2019. None of these issues are a basis for denying Life Time’s application. To avoid duplication, the following table identifies for the Commission the materials in which Life Time has responded to these concerns.

<b>Issue:</b>	<b>Exhibit</b>	<b>Life Time Response:</b>
Height Adjustment.	3.3	Krawczuk Letter (May 29, 2019), pp. 1-3 Appendix A – Perspective Views Appendix B – Elevations
	3.4	Krawczuk Letter (June 5, 2019), p. 2
Maximum Height	3.3	Krawczuk Letter (May 29, 2019), p. 4 Appendix C – Sheet C154
	3.4	Krawczuk Letter (June 5, 2019), pp. 2-3
Pedestrian Orientation	3.3	Krawczuk Letter (May 29, 2019), pp. 1-3 Appendix A – Perspective Views Appendix B – Elevations
	3.4	Krawczuk Letter (June 5, 2019), pp. 2-3
Outdoor Pool Use	3.3	Krawczuk Letter (June 5, 2019), pp. 5-7
	3.4	Krawczuk Letter (May 29, 2019), pp. 4-5
<b>Traffic</b>		
a. 2007 Traffic Study	3.3	DEA Memorandum, <i>Response to Transportation Issues Raised in Testimony</i> (May 29, 2019)
	3.4	Krawczuk Letter (June 5, 2019), pp. 3-4
b. Effect of Project Modifications	3.3	DEA Memorandum, <i>TIA – Addendum #5: Change in Use</i> (May 28, 2019)
c. Life Time Work	3.4	DEA Memorandum, <i>TIA – Addendum #6: Trip Generation for Life Time Work</i> (June 5, 2019)
Open Space	3.3	Krawczuk Letter (May 29, 2019), pp. 6-7 Appendix D – Open Space Areas
Scenic Viewshed	3.3	Krawczuk Letter (May 29, 2019), p. 6
Tree Removal Plan	3.3	Krawczuk Letter (May 29, 2019), pp. 7-9
Stormwater	3.3	Krawczuk Letter (May 29, 2019), p. 10

**B. Response to Connors Letter**

Mr. Connors raised a number of concerns in his letter to the Commission dated June 5, 2019. Life Time’s prior submissions respond to the substantial majority of Mr. Connors’ comments, and those responses are identified in the table in the previous section. This section provides additional clarification regarding certain issues and responds to new arguments raised in Mr. Connors’ June 5th letter.

**1. Project Modifications**

Mr. Connors argues that an additional public hearing is required, or that the Commission should deny Life Time’s application, because Life Time has proposed modifications to the project.

Connors Letter, p. 1 (June 5, 2019). All the proposed modifications to Life Time’s project are in direct response to comments from the Commissioners and the public. The public had one week to comment on the changes to the project and, indeed, Mr. Connors submitted comments on the modified project on his client’s behalf. No parties’ interests have been prejudiced by Life Time’s proposed modifications, or the public testimony schedule announced by the Commission at the May 15th hearing. An additional hearing is not required.

## **2. Project Size**

Mr. Connors states that Life Time’s project is “still too massive for this property and area.” Connors Letter, p. 5 (June 5, 2019). Mr. Connors does not, however, identify any provision in the Beaverton Development Code (“BDC” or “Code”) to support this position. Life Time’s project complies with all applicable approval criteria. To be relevant, comments must be directed at approval criteria. Because Mr. Connors’ comments regarding the size of the project are not directed at approval criteria, they should be disregarded.

## **3. Outdoor Swimming Pool**

Mr. Connors argues that Code Section 20.10.40 prohibits Life Time’s outdoor pools, because Section 20.10.40 requires activities in the Commercial Corridor (CC) zoning district to be conducted “wholly within an enclosed structure.” BDC 20.10.40.1.<sup>1</sup> Contrary to Mr. Connors’ arguments, and for the following reasons, Section 20.10.40 does *not* bar approval of Life Time’s outdoor pools.

### **i. Section 20.10.40 creates ambiguity in the Code.**

Mr. Connors correctly states that a development code that is unambiguous must be interpreted according to its plain language. Connors Letter, p. 4 (June 5, 2019). In this case, however, Section 20.10.40 creates two ambiguities that require interpretation in accordance with the City’s Code.

First, the parties disagree on the meaning of “enclosed structure.” Mr. Connors appears to assume that “enclosed structure” means a building with a roof. *See* Connors Letter, p. 3 (June 5, 2019). Because Life Time’s proposed outdoor pools are not covered by a roof, Mr. Connors concludes that the pools are not within an “enclosed structure.” “Enclosed structure” is not

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<sup>1</sup> Section 20.10.40 applies to uses in the CC zoning district. However, Sections 20.10.30 and 20.10.35 likewise require that activities in the Neighborhood Service (NS) and Community Service (CS) zoning districts be conducted “wholly within an enclosed structure[.]”

defined in the Code. As described in our earlier testimony, based the dictionary definition of “enclosed” and the Code definition of “structure,” Life Time’s outdoor pools *are* wholly within an enclosed structure because they are surrounded by retaining walls, the exterior walls of the fitness facility, and six-foot decorative metal fencing. Krawczuk Letter (June 5, 2019), p. 6-7.

Second, Code Sections 20.10.40 and 20.10.20(23) create a clear conflict regarding whether outdoor recreational uses are allowed in Commercial zoning districts. Section 20.10.20(23) allows Recreational Facilities in the Commercial zoning districts. Recreational Facilities are facilities “that are intended to provide amusement to the user, with limited allowance for spectators.” BDC Ch. 90. The “**use includes, but is not limited to theaters, health clubs, golf courses, non-motorized bicycle tracks, skateboard parks, swimming clubs or pools, tennis or handball or racquet clubs, bowling alleys, dance halls, skating rinks, indoor soccer fields, laser tag, paintball, or other similar uses.**” *Id.*

Sections 20.10.30, 20.10.35, and 20.10.40 require activities in the CC, NS, and CS zoning districts to be “conducted wholly within an enclosed structure.” If Mr. Connors’ interpretation of “enclosed structure” is applied, such that “enclosed structure” means a building with a roof, a golf course could never be “conducted wholly within an enclosed structure.” Therefore, under Mr. Connors’ interpretation of “enclosed structure,” Sections 20.10.30, 20.10.35 and 20.10.40 would prohibit a golf course in the CC, NS, and CS zoning districts, even though Section 20.10.20(23) says that golf courses are allowed. This is a conflict that creates ambiguity.

**ii. *Even if “enclosed structure” is interpreted to mean a building with a roof, Section 20.10.40 does not prohibit outdoor pools.***

Because it is unclear in what manner Section 20.10.40 applies to outdoor Recreational Facilities, the Code requires Section 20.10.40 to:

be interpreted reasonably, reading questioned regulations in relation to other sections such that an interpretation most fully effectuates the intent and purpose of the regulations.

BDC 10.20.6.C.

We explained in our earlier testimony that Sections 20.10.30, 20.10.35, and 20.10.40 of the Code do not prohibit outdoor activities that are expressly authorized uses in the NS, CS, and CC zoning districts. *See* Krawczuk Letter, pp. 4–5 (May 29, 2019). We explained that Code Sections 20.10.30, 20.10.35, and 20.10.40 prohibit only outdoor *activities* that are not expressly authorized uses in those districts. For example, although automotive service uses are permitted in the CC, NS, and CS districts, outdoor activities associated with automotive services that are

not “wholly within an enclosed structure” are not allowed. By contrast, uses such as outdoor pools, golf courses, and skateparks, which are characterized by their outdoor exposure and are permitted in the CC, NS, and CS districts, are allowed.

One of the bases for our conclusion was that certain Recreational Facilities, such as golf courses, involve inherently outdoor activities, and therefore could not be modified or tailored to satisfy the “enclosed structure” requirement. Be that as it may, Mr. Connors argued that pools do not fall into this category, because pools may be outdoor *or* indoor. Connors Letter, p. 5 (June 5, 2019).

Mr. Connors’s argument essentially rewrites the definition of “Recreational Facilities” to include only “*indoor* swimming clubs or pools.” The Code defines Recreational Facilities to include “swimming clubs and pools.” BDC Ch. 90. If only indoor pools were allowed, then the Code would say that. This is precisely what is done for soccer fields. The Code defines Recreational Facilities to include “indoor soccer fields”—not “soccer fields.” If the drafters intended to include both indoor and outdoor soccer fields, they would have defined Recreational Facilities to include “soccer fields.” Likewise, the drafters would not have defined Recreational Facilities to include “swimming clubs or pools” if they only intended to allow indoor pools.

**iii. *In the alternative, even if Section 20.10.40 requires outdoor pools to be wholly within an “enclosed structure,” Life Time’s outdoor pools satisfy that requirement.***

Finally, even if Section 20.10.40 is interpreted to apply to Recreational Facilities that are necessarily outdoors, Life Time’s outdoor pools may be approved because they are wholly within an “enclosed structure.”

Given the disagreement regarding the meaning of the term “enclosed structure,” it is appropriate to rely on definitions in the Code and in the dictionary. *See* BDC 10.20.6. We explained in our prior testimony that “enclosed” is defined to mean “to close in,” “surround,” or “to fence off or in order to appropriate to individual use.” Krawczuk Letter, p. 7 (June 5, 2019). “Structure” is defined in the Code to mean “[a]nything which is constructed, erected or built and located on or under the ground, or attached to something fixed to the ground.” *Id.* Based on these definitions, Life Time’s outdoor pools are within a wholly enclosed structure. The proposed outdoor pools are “closed in or fenced off” on all sides. Specifically, the outdoor pools are surrounded by retaining walls, the exterior walls of the fitness facility, and six-foot decorative metal fencing, which qualify as a structure. Thus, the pools satisfy Section 20.10.40.

### **3. Open Space**

As a threshold matter, it is important to reiterate that Condition 43 to the Sunset Station and Barnes Road PUD states clearly that open space dedication requirements are triggered “at the time of development of residential uses[.]” (Emphasis added.) Life Time’s development is not residential, and therefore does not trigger the PUD’s open space dedication requirements. Accordingly, any testimony about compliance with the PUD’s open space dedication should be disregarded.

Although Life Time’s project is not required to provide open space, pursuant to the PUD’s conditions of approval, Life Time endeavored to be responsive to testimony related to open space by explaining that at the time open space dedications are required, it is feasible for the PUD to comply with the condition of approval. In Life Time’s May 29 submission to the Commission, Life Time included a map showing potential dedications of open space for the Sunset Station and Barnes Road PUD. *See* Krawczuk Letter, Appendix D (May 29, 2019). The map was provided to Life Time by the planners who are handling J. Peterkort and Company’s development of the PUD and was intended to illustrate areas of intended open space dedication by J. Peterkort and Company.

Mr. Connors argues that the map is inadequate to demonstrate the feasibility of satisfying the open space requirements for the PUD, because a portion of the areas shown on the map are outside the borders of the PUD. As an initial matter, the PUD does not expressly require that open space areas be inside, as opposed to contiguous with, the PUD. However, even if open space areas *were* required to be located within the borders of the PUD, there is sufficient undeveloped area in the PUD to satisfy the PUD’s open space requirements.

Finally, we note that Life Time is providing a generous pedestrian plaza, with pedestrian amenities including water features, planter benches, and covered trellises, at the corner of SW Barnes Road and SW Cedar Hills Boulevard. Although this area does not count towards the Code’s “open space” requirements because it is not permanently dedicated, it nonetheless provides pedestrian open space benefits.

### **4. Traffic**

Mr. Connors included as an exhibit to his testimony a memorandum from Kittelson & Associates (“Kittelson”) dated June 5, 2019. With the exception of one issue, which is discussed below, Life Time has responded to all the relevant traffic-related issues raised in Mr. Connors’ letter and Kittelson’s memorandum. These responsive submissions are identified in the table in the previous section.

While we do not repeat all of the responses to questions raised about Life Time's Traffic Impact Analysis ("TIA"), we emphasize that Life Time has consistently adopted the most conservative approach to estimate traffic impacts from Life Time's facility, and the methodology in the TIA conforms with standard industry practice. The alternative means for estimating the trips generated by the project that have been suggested by some testimony would result in **lower** trip counts and **fewer** transportation improvements. Life Time worked with the City regarding the methodology applied in the TIA, including the use of the 2007 study prepared by TRC Engineers, Inc., titled *Life Time Fitness Centers: Traffic & Parking Design Characteristics*, which the City staff have supported.

The new issue raised by Kittelson concerns intersection queuing identified in the TIA. The TIA identifies certain intersections that are expected to extend past the length of the turn lane. As demonstrated in TIA, however, Life Time is not expected to add traffic to the majority of these lane movements. Further, the queuing deficiencies exist under background conditions, meaning that they would be present with or without development of Life Time's project. For that reason, there is no nexus between Life Time's development and the associated improvement.

**C. Conclusion**

The majority of testimony that has been submitted throughout the open record period has concerned the height and design of Life Time's facilities, or Life Time's analysis of traffic-related impacts from the project. With respect to the first topic, Life Time modified the project to reduce the height and overall size and to provide a vibrant, interactive pedestrian space at the corner of SW Barnes Road and SW Cedar Hills Boulevard. With respect to the second, the City, County and ODOT have reviewed and agree with Life Time's TIA methodology, which conservatively estimates the traffic impacts from the proposed facility and conforms with industry standard.

Life Time has been responsive to community feedback and the proposed project complies with all of the applicable approval criteria. We respectfully request that the Planning Commission approve the project at its June 12th hearing.

Very truly yours,



Dana L. Krawczuk